IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
PIL NO.91 OF 2006

Miss Geeta M. Sardesai & anr. .. .. Petitioners
v/s.
The Union of India & ors. .. Respondents

Mr.A.M.Joshi for petitioners.
Ms.Anamika Malhotra for respondent No.1.
Mr.P.M.Patil, AGP for respondent Nos.2 & 3.

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**CORAM : H.L. GOKHALE, ACTING C.J. &**
**V.M. KANADE, J.**

**DATED : 8th February 2007**

**P.C. :**

1. Heard the learned Counsel for the parties.

2. This Petition is filed by two Advocates and the main prayers of this Petition are prayers (a) and (b) which read as follows:-

> " (a) The Honourable Court be pleased to issue Rule in this Petition.
>
> (b) The Honourable Court be pleased to issue writ of mandamus or any other appropriate writ, directions or order directing the State Government to form a committee consisting of such members from Judiciary and other fields as deemed necessary by this Honourable Court which

will decide every year percentage of State budget which would be credited to the High Court as a matter of expenditure towards pay and allowance of Hon'ble High Court Judges, lower judiciary and total infrastructure of the State judiciary as a whole."

3. Mr.Joshi, learned Counsel appearing for the petitioners, submits that when it comes to the High Court or its employees, there is one mechanism in the Constitution, whereas there is another mechanism for the subordinate Judges and the prayer is essentially for financial independence and control by the High Court over all its affairs as well as those of the subordinate Courts. It is further submitted that as far as High Court is concerned Article 229(3) of the Constitution of India lays down that the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court are chargeable on the consolidated fund of the State and any fees and other monies taken by the Court have to form part of that fund. Article 202 (3)(d) lays down that expenditure in respect of the salaries and allowances of Judges of the

High Court is to be charged on the consolidated fund. It is submitted by Mr.Joshi that the control over these subordinate courts is with the High Court under Article 235 and recruitment of persons other than the District Judges to the judicial services etc. is also in consultation with the High Court under Article 234. He contends that there is no reason why the financial affairs of the subordinate judiciary should not be vested with the High Court. In his view, High Court should have complete financial independence.

4. Mr.Joshi has referred to a few judgments wherein there are certain observations in this behalf. Firstly, he has referred to the Apex Court judgment in the case of **All India Judges' Association & ors. vs. Union of India & ors. reported in (2002) 4 SCC 247** where in para-25 the Court has observed that an independent and efficient judicial system is one of the basic structures of the Constitution.

5. He has drawn our attention to para-8 of the judgment of the Apex Court in the case of **All India Judges' Association & ors. vs. Union of India & ors. reported in (1993) 4 SCC 288** wherein the Court has observed that the distinction

between the Judges and the members of the other services has to be kept in mind.

6. Mr.Joshi has lastly referred us to para-39 of the judgment of the Apex Court in the case of **Union of India vs. Naveen Jindal & anr. reported in (2004) 2 SCC 51** where the Court has observed that constitution being a living organ, its ongoing interpretation is permissible and that one should have flexibility in this behalf.

7. In our view, the issues raised in this Petition are matters of policy. They are matters where other wings of the State i.e. legislature and executive will also have to apply their mind. They are not aspects on which any decision can be arrived at on the judicial side. Petition is dismissed.

**(ACTING C.J.)**

**(V.M. KANADE, J.)**